

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-10010-PBS
)
 MATTHEW DWINELLS)

DEFENDANT'S MOTION IN LIMINE
REGARDING "BUDDY-LIST" EVIDENCE

The defendant Matthew Dwinells respectfully moves that this Court exclude reference during trial, and specifically during the testimony of witnesses Brian Lee and Richard Irvine, to the "buddy-list" names which were recovered from his accounts with Yahoo and America Online. As background, there is evidence that Dwinells had communicated with various people via the internet before March of 2003. The on-line names, which are all pseudonyms, of these contacts were found by agents who accessed Dwinells' accounts with Yahoo and America Online. These contact lists are colloquially known as "buddy lists." The pseudonyms used by many of the contacts are sexual in nature; for example, one contact dubbed herself "im_horny_18f;" another used the name "cumslut43;" a third called herself "cockhungrypussey2001." Dwinells himself used sexually neutral on-line names: "mattacc61," and "MttDwnlls."

To counsel's knowledge, the government has no evidence about whether Dwinells had had recent contact with these various

"buddies" at the time his account was accessed or whether these contacts were stale or remote. So far as defense counsel knows, the government made no further investigation to attempt to identify any of these people by age, sex, or any other pertinent personal trait.

Counsel submits that the introduction of these raunchy alter-egos of anonymous inhabitants of cyberspace causes unfair prejudice to the defendant at this trial. That Dwinells may have at some forgotten moment in the past exchanged instant messages with cumslut43 in no way enlightens the jury about his intentions regarding "Couchchild," "Ashley," or "Maria." Yet Dwinells' presumed association with a person with such a name will invite the jury to speculate about these other encounters, the substance of which cannot now be proven and the relevance of which to this case is non-existent. The fact that Dwinells communicated with unknown individuals who, in many cases, used pseudonyms that were either sexually explicit or which suggested that the person using the name was either a teenager is completely unenlightening about the content of the past communications; without any evidence of the content of the earlier communications, the government cannot show that their existence has any relevance to this case.

In this case, what the Government accomplishes by introducing this evidence is to cast the defendant as an unsavory character who *may* be carrying on a very large number of "online

relationships" with purported minors that could range from discussions about local sports teams to flirtatious sexual banter to potential illicit physical relationships with teens. These "buddy-list" names are not neutral because they would most certainly suggest potential uncharged criminal activity on the part of the defendant to a jury. See United States v. Eddie Lee Williams, 739 F.2d 297 (7th Cir. 1984) (introduction by detectives of nick-name of the defendant was reversible error where it was not probative on any issue in the case and created a suggestion in the jurors minds that the defendant was known by law enforcement to be criminal).

Indeed, the existence of these "buddy-lists" on the defendant's computers is wholly unrelated to the other evidence which will be presented in the government's case; the government will produce no evidence of the substance of any of these communications or the identities and true ages of these anonymous individuals. The gratuitous introduction of these sexually explicit and potentially misleading names is fraught with undue prejudicial effect and should be excluded. See Fed. R. Evid. 403.

MATTHEW DWINELLS

By his attorney,

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